

The 23rd August, 1985

No. 9/5/84-6Lab/6898.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of Haryana Roadways, Bhiwani :—

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT,
ROHTAK

Reference No. 63 of 1979

between

SHRI ROHTAS SINGH, WORKMAN AND THE MANAGEMENT OF HARYANA
ROADWAYS, BHIWANI

Appearances.—

S. S. Gupta, A. R. for the workman.

Shri Vijay Vir Singh, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Rohtas Singh and the management of Haryana Roadways, Bhiwani to this Court, for adjudication,—vide Labour Department Gazette Notification No. HSR/37-78/1462, dated 16th March, 1979 :—

Whether the termination of services of Shri Rohtas Singh was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The claim of the workman is that he was employed with the respondent for sufficient long time but on 31st January, 1975, the respondent choose to terminate his services after holding a farce of an enquiry, in which he was not given an opportunity of complete participation and as such he has prayed for reinstatement with benefits of previons service and full back wages.

3. In the reply filed by the respondent, the claim of the workman has been controverted in to to. It is alleged that a proper and fair enquiry was held regarding the allegations against the workman and that the order of termination based upon the same is legal and lawful.

4. On the pleadings of the parties, the following issue was framed for decision on 11th June, 1979 :—

Whether the termination of services of Shri Rohtas Singh was justified and in order?
If not, to what relief is he entitled?

5. Again on an application filed by the management issues framed already were recasted as under :—

(1) Whether service of the workman was terminated after fair and proper domestic enquiry which was conducted in keeping with the principles of natural justice and the findings of Enquiry Officer was not perverse.

(2) Whether the termination of services of Shri Rohtas Singh was justified and in order?
If not, to what relief is he entitled?

6. My learned predecessor further held,—vide his order dated 13th August, 1979 that issue No. 1 regarding demestic enquiry shall be tried as a preliminary issue.

7. Both the parties were allowed to produce their evidence on the preliminary issue. The management examined Shri R. D. Verma MW-1, Assistant Accounts Officer, who held the enquiry against the workman and MW-2 Shri Jaipal Singh, Establishment Assistant, Haryana Roadways, Bhiwani Depot. The workman appeared as his own witness as WW-1.

8. Learned Authorised Representatives of the parties heard.

9. The validity and legality of the enquiry conducted against the workman has been challenged by the learned Authorised Representative of the workman Shri S. S. Gupta on the ground that the enquiry proceedings were not held in accordance with the provisions of the Punjab

Punishment and Appeal Rules, 1956 and that no speaking order was passed by the competent authority on the explanation furnished by the workman to the charge-sheet issued against him and that the Enquiry Officer was biased against the workman and further more there was no corroboration of the statement of the Inspector Shri Abhai Ram and that the charge-sheet issued against the workman was defective, so-much-so, that the same was not accompanied by gist of allegations. Most of these contentions do not find favour with this Court, because the same are based upon conjectures and surmises. There is no denying the fact that the domestic enquires are usually held by layman not well conversant with legal procedure and that the sophisticated rules of evidence are not applicable in such enquiries. The only safeguard insisted upon by the courts is that the same should be conducted in accordance with the principles of natural justice and that the delinquent employee should be given an opportunity of complete participation and that simply because there was not Presenting Officer present on behalf of the management or that the Enquiry Officer himself choose to put a few innocuous questions to the witness of the management or to the employee will not go to show that he was biased against the employee. The management has placed on record complete enquiry proceedings file and I had a privilege to go through the same and I find no infirmity in the procedure adopted by the Enquiry Officer. The workman choose to cross-examine the witnesses of the management, which was recorded in question answer form. So, I find that the domestic enquiry held against the workman was valid and proper and as such, this issue is answered against the workman.

10. Having answered the issue regarding domestic enquiry against the workman, there is no necessity to adjourn the case any further and this Court is *suo-moto* competent to interfere in the punishment awarded to the workman under section 11-A of the Industrial Disputes Act, 1947. The charge against the workman is that he allowed two passengers to travel without tickets on the date checking was done by the Inspectorate Staff of the respondent and the passengers were made to pay double the fare. Even if, the allegations against the workman are taken into be true, even then, it cannot be held that any loss of money was caused to the Exchequer. It is a common experience that the buses of the State Transport usually ply overcrowded, which some times tries the patience of the Conductor but they allow this overcrowding in the buses in the interest of State Exchequer. In this state of affairs certain unscrupulous passengers try to capitalise by not purchasing tickets. So, in the backdrop of these circumstances, the aberration on the part of the workman cannot be viewed seriously and I feel that the punishment awarded to the workman is shockingly disproportionate to his misconduct. So, interfering under section 11-A of the Industrial Disputes Act, 1947, is called for. The order of dismissal is set aside and the workman is ordered to be reinstated with continuity of service and 40 per cent back wages from 1st January, 1979 onwards. Back wages for the period 31st January, 1975 to 31st December, 1978 have been withheld because the workman slumbered over his right for three long years and he raised demand notice somewhere at the fag end of the year 1978, though no date is mentioned upon the demand notice appended with the order of reference. The reference is answered and returned accordingly. There is no order as to cost.

Dated, the 26th July, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Bhiwani,
Camp Court, Bhiwani.

Endst. No. 63-79/1178, dated the 7th August, 1985.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Bhiwani,
Camp Court, Bhiwani.

The 5th September, 1985

No. 9/5/84-6Lab/7363.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer Labour Court, Ambala in respect of the dispute between the workman and the management of The General Manager, Haryana Roadways Ambala.

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 105 of 1984

(Old) No. 159 of 1983

SHRI VIRENDER KUMAR, WORKMAN AND THE MANAGEMENT OF THE GENERAL MANAGER, HARYANA ROADWAYS, AMBALA

Present :—

Shri Rajeshwar Nath for workman.

Shri Karan Singh for respondent.

AWARD

The Hon'ble Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, referred the dispute between Shri Virender Kumar, workman and the management of Haryana Roadways, Ambala to Labour Court, Faridabad. The terms of reference are as under :—

“Whether the termination of services of Shri Virender Kumar, workman was justified and in order ?
If not, to what relief is he entitled to ?”

Shri Virender Kumar, workman sued the respondent alleging that he was appointed as a conductor in the year 1969 in the service of respondent. He was suspended on 23rd July, 1979 thereafter he was reinstated in pending enquiry. On the basis of enquiry report which is full of conjectures and surmises. His services were terminated on 21st January, 1982. The charges were not well founded. The order of the termination is illegal and unjust. The workman is entitled to reinstatement with continuity in service with full back wages.

Respondent contested the case contended that reference is bad on account of non-joinder of necessary parties. Workman was suspended on the basis of fraud. Departmental enquiry was held. Inquiry Officer submitted his report on 18th November, 1981. Workman was given due opportunity to lead defence evidence and was also heard in person. On the basis of allegations of selling of re-issued tickets is well founded and it is not only a fraud of clear out nature but was an act of treachery on the part of the workman, so he is not at all entitled to relief claimed for.

Workman filed replication through it controverted the averments made by the respondent in written statement.

On pleadings of the parties the following issues have been framed for just decision of this case :—

ISSUES—

1. Whether the termination order, dated 21st January, 1982 is according to law, if not, to what effect ? OPR
2. Whether application is not maintainable ? OPR.
3. Whether application is bad for non-joinder and mis-joinders of necessary parties ? OPR.
4. Relief ?

I have heard Shri Rajeshwar Nath, authorised representative of workman and Shri Karam Singh for respondent-management and have perused the evidence placed on the file. My issue-wise findings are as under :—

Issue No. 1—

In support of this issue management examined Shri Yoginder Kumar Clerk as MW-I who brought the inquiry file. He stated that on 4th August, 1977 a charge-sheet was served upon the workman for having committed an offence of fraud of Rs. 12 and Rs. 24/25 P. Traffic Manager conducted enquiry and adverse findings were given against workman. On the basis of the same enquiry report show-cause notice was served which was replied by workman on 11th January, 1982 and personal hearing was given to workman. Since the fault of the workman was found established, so his services were terminated. In cross-examination this witness stated that he has no personal knowledge about this case. Inquiry was conducted in his presence. The respondent tendered the inquiry file in which statement of Shri Kulbushan, Inspector and Shri Kulvinder Singh clearly show that on 1st May, 1977 bus No. 706 was checked at Begum Pul near Meerut. The workman had issued 7 tickets to 7 passengers of Rs. 3 each which were punched towards down side instead of upside. The bus was checked again the same tickets were re-soled for Rs. 24/25 P. The Conductor had combined the 0.20 paise U.P. area. Copy of tickets which were properly punched on 2nd May, 1977, the bus was again checked the Conductor had issued 4 tickets of Haryana area. A copy of ticket book of Rs. 2 had been combined towards upside A-17 towards downside he had punched 17-ii. This ticket book was meant for using Ambala to Yamuna Nagar. The Conductor had collected sold tickets from the passengers which had given for Ambala from Meerut and same tickets were used on the next day after combining with other tickets and thus embazzled Rs. 12/-. Shri Virender Kumar, Conductor No. 109 in his reply to his charge-sheet admitted that it is correct that he had issued tickets to 7 passengers travelling from Muzaffar nagar to Meerut. On 1st May, 1977 but due to mistake and oversight they were punched upside instead of down side. In his 2nd reply he submitted he had issued tickets numbers in question on 2nd May, 1977 from Meerut to Ambala but these were punched by him inadvertently wrongly towards wrongside 17-ii instead of upside 17-i. He further stated that omission was not intentional.

When Shri Virender Kumar appeared in the witness-box as AW-1, he admitted that he was given full opportunity by the Inquiry Officer to cross-examine the witness and to lead the defence evidence. However he stated that a personal hearing was not afforded by the General Manager, but it was afforded by Steno of the General Manager.

In view of the above evidence, it is proved beyond doubt from the statement of both the Inspector and the reply of workman himself, dated 8th August, 1977 as reproduced above that the workman re-sold tickets and embezzled Government funds.

A proper enquiry was held and proper procedure was followed. No doubt the enquiry officer has died and could not be examined but the writings and decisions given by the deceased person are relevant under the evidence Act, so these have been taken into consideration. I think that management has been able to establish that the enquiry was fair and proper and order of termination is justified. So this issue is decided against the workman and in favour of respondent-management.

Issues No. II and III—

Issue Nos. II and III were not pressed nor any arguments were advanced. Both the issues are decided against respondent-management.

Issue No. IV—

For the foregoing reasons on the basis of my findings on issue No. I, claim of the workman fails. I pass my award accordingly regarding the dispute in hand.

V.P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

Dated, the 17th June, 1985.

Endst. No. 1777, dated 31st July, 1985.

Forwarded (four copies) to the Financial Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

No. 9/5/84-Lab/7364.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of the State Transport Commissioner, Haryana, Chandigarh and the General Manager, Haryana Roadways, Kaithal, Depot, Kaithal (Haryana):—

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,
AMBALA

Reference No. 173 of 1984

(Old No. 183/83

between

SHRI SIKANDER LAL, WORKMAN AND THE MANAGEMENT OF THE STATE
TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH AND THE
GENERAL MANAGER, HARYANA ROADWAYS, KAITHAL DEPOT,
KAITHAL (HARYANA).

Present :—

Shri Rajeshwar Nath for workman.

Shri A. R. Goel for the respondent.

AWARD

The Hon'ble Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, referred the dispute between Shri Sikander Lal, workman and the management of the State Transport Commissioner, Haryana, Chandigarh and the General Manager, Haryana Roadways, Kaithal to Labour Court, Faridabad. The terms of the reference are as under:—

Whether the termination of services of Shri Sikander Lal, workman, was justified and in order? If not, to what relief is he entitled to?

Shri Sikandar Lal, workman has challenged the respondent-management through his statement of claim alleging that he joined the employment of respondent-management in the year 1963 as Conductor. He served to the satisfaction of his superiors upto 30th October, 1981. On 31st October, 1981 his services were terminated illegally in contravention of section 25(F) of the Industrial Disputes Act, 1947. The Inquiry Officer did not conduct inquiry in a fair and proper manner. No opportunity of cross-examination to defend himself and to lead defence evidence was afforded. The order of termination is based on misconceived facts also reflects certain remarks from the past records of the petitioner which were never mentioned in the charge-sheet. The punishment is shocking and disproportionate to the gravity of charges. The order of termination is liable to be set aside. Petitioner is entitled to the reinstated with continuity in service and with full back wages.

Notices were issued to respondents. They have contested this case by contending that the claim of the workman is bad and is not maintainable for delayed and latches. Services of workman were legally terminated. Inquiry was fair and proper. Petitioner did not pray to the inquiry officer for permission of legal assistance, full opportunity of defend and defence were afforded to him. The punishment is justified and be fitting considering the gravity of offence. Petitioner is not entitled to relief claimed for.

Petitioner filed replication and controverted the allegations of the respondents. On the pleadings of the parties the the followintg issues have been framed:—

ISSUES

1. Whether the termination order, dated 31st October, 1980 is justified, if not, its effect? OPM
2. What is the effect of delay OPM
3. Relief?

I have heard Shri Rajeshwar Nath for workman and Shri A. R. Goel for respondent and have perused oral and documentary evidence placed on file. My issue-wise findings are under:

ISSUE NO. 1—

In support of this issue management examined one Shri Sikander Lal, Clerk, Haryana Roadways Kaithal, who brought the enquiry file containing order of termination Ex-M-1. charge-sheet is Ex-M-2. He stated that the petitioner did reply to charge-sheet. The inquiry officer was appointed,—vide order, dated 13th April, 1979 when this inquiry was carried out he was not present nor he was employed in the Kaithal Depot so this witness is a formal nature.

Shri Tirlok Singh, MW-2, Station Supervisor, Haryana Roadways, Hissar deposed that in July, 1979 he conducted an inquiry against Shri Sikander Lal. He recorded statement of Shri Tilak Raj in the presence of petitioner. Shri Sikander Lal petitioner did not cross-examine the witness. He further stated that he afforded an opportunity to workman to lead defence evidence, but he did not avail this right. His facts findings Ex-M-12 was submitted to the General Manager. On the basis of this enquiry the services of the workman Shri Sikander Lal were terminated.

On the other hand MW-3 Shri Tilak Raj stated that in June, 1978 he reported against Shri Sikander Lal. Report is Ex-M-13 and M-14. He made a note on the Way Bill of the workman. No such note is available on the Way Bill. There are many entries on the Way Bill and the encircle in red ink is also in his pen. Petitioner re-sold the tickets. No such note was given by him on the Way Bill. Unpunched tickets which were taken from the workman nor got signed from the workman and nor his cash was checked.

Shri Sikander Lal, workman appeared as AW-1. He deposed that when his Bus was checked by Inspector on the road wrong numbers were entered in the way bill which were corrected. On his intervention the Inspector did not give any note on the way bill about any shortcomings of the workman. In fact the Inspector took un-punched tickets on the pretext of checking which were received from the lot and were not got signed from the petitioner. At the time of the enquiry the previous records was not questioned.

In view of this above evidence I am of the view that in the charge-sheet Ex.M-2 there is no mention of past records of the workman, so it has got no relevancy in the case in hand.

From the statement of Shri Tirlok Singh, Inquiry Officer, it is evident that petitioner did not cross-examine the complainant which shows that the workman was not afforded the opportunity to cross examine the complainant. It was the duty of the Inquiry Officer to tell the workman in clear and specific words orally as well as in writing that if the workman failed to cross-examine and rebut the statement of the complainant that will be read against him in the evidence in connection with the enquiry being conducted against him. Non-compliance of this procedure shows that enquiry officer did not conduct the enquiry in a fair and proper manner.

There is no mention in the inquiry file that the Inquiry Officer ever directed the workman either to conduct his case in person or through his legal representatives. Non-cross-examination of witnesses and non-leading of defence evidence clearly shows that the workman was ignorant about his right and it was not made clear by the Inquiry Officer that non-cross-examination the workman to the complainant and non-leading of defence evidence shall go against him.

On merits of this case statement of Shri Tilak Raj, complainant who checked the bus of workman is very interesting when Shri Tilak Raj checked the bus way bill and tickets of Shri Sikander Lal, workman at that time on the way bill he did not give any adverse remarks or note in writing. The charge of re-selling the tickets remains un-proved when the workman stated that on the pretext of checking the tickets one copy book of tickets was taken by Shri Tilak Raj, Inspector and he received certain tickets which were un-punched and never obtained signatures of the workman. So and so the Inspector even did not check the cash of the conductor, this shows the conduct of the Inspector who filed complaint against the workman is not proper and appears to be un-fair.

On the basis of the Inquiry Officer notice was issued and services of the workman were illegally terminated because the grounds on which the workman services were terminated were not well founded during the inquiry proceedings nor these were sustained during the trial of this case. Accordingly, I hold that the termination order is unjust. Hence it is set aside. This issue is decided in favour of workman and against the management.

ISSUE NO. 2

Under the Industrial Disputes Act, 1947 no limitation has been prescribed for challenging the termination order of the workman, so question of delay and laches does not arise. This issue was not pressed nor any arguments were advanced. Accordingly also this issue is decided against the management.

ISSUE NO. 3

For the foregoing reasons on the basis of my findings on issue No. 1, I set aside the termination order, dated 31st October, 1980 and order the re-instatement of the workman Shri Sikander Lal with continuity in service with full back wages.

I pass my award regarding the dispute in hand accordingly.

V. P. CHAUDHARY,

Dated the 15th July, 1985.

Presiding Officer,
Labour Court, Ambala,

Endst. No. 1779, dated Ambala City the 31st July, 1985

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala,